

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15690 of Manufacturers Real Estate, pursuant to 11 DCMR 3107.2, for a variance from the floor area ratio requirements for a 130-foot building requesting bonus density (Sub-section 1703.6), a variance from the provision that not less than fifty percent of the floor area be devoted to preferred uses as arts and arts related uses [Paragraph 1703.3(d)], a variance from the provision that not less than fifty percent of the streetwall be devoted to display windows and entrances to commercial uses (Sub-section 1701.5), and a variance from the provision that entrances to the building be separated by not more than fifty feet on average for the linear frontage of the building [Paragraph 1701.5(b)] for an addition to a 12-story retail office building in a DD/C-4 District at premises 555 12th Street, N.W. (Square 321, Lots 23 and 26).

HEARING DATE: May 20, 1992
DECISION DATE: May 20, 1992 (Bench Decision)

ORDER

SUMMARY OF THE EVIDENCE OF RECORD:

1. At the commencement of the hearing, the applicant submitted a revised set of plans that reflected the most recent modifications to address issues raised by the Office of Business and Economic Development and the Office of Planning. The Board accepted the revised plans into the record.

2. The subject site includes all of Square 321, bounded by F Street to the north, E Street to the south, 11th Street to the east and 12th Street to the west. The site has a land area of 69,832 square feet. The applicant intends to subdivide the site into a single record lot, and proceed with a two-phase development of the subject site.

3. The property is currently being developed with the building approved under BZA Order No. 15233. The remainder of the square includes the 130-foot tall commercial office/retail building at 550 11th Street, N.W. on Lot 23. That building will be razed as part of Phase II of the development in late 1996, after the existing tenants vacate the building.

4. The site is located in the retail core of the District, is within the boundaries of the Downtown Development (DD) District, and is subject to the provisions therein pertaining to SHOP and Arts.

5. The subject site was identified by the Office of Planning and others during the SHOP hearings as one of only three possible locations for a fourth department store. Since that time, the Garfinkel's department store has closed. The other sites, Square 289 and 376 are not feasible. Square 289 has been substantially developed without a department store. Square 376 is too far from the retail core, and is otherwise in a poor location for a large concentration of retail.

6. The applicant and the District have entered into a Development Agreement for the development of the site which is to provide space for a department store to be located in the southern half of the Square and to occupy the E Street frontage of the subject site and portions of the 11th and 12th Street frontages on four floors of the building. The Agreement has a duration of 20 years pursuant to its terms. Subsequently, the applicant and the District entered into a First Amendment to Development Agreement to include as an exhibit the revised plans which are the subject of this application.

7. The Phase I plans are essentially the same in the instant application as the previously approved plans (BZA Application No. 15233). The Phase I plans have been modified to accommodate the extension of the building into Phase II. The plans demonstrate that all levels of Phase I and II construction below and above grade will be connected and the exterior architectural features of Phase I will be extended into Phase II. The Phase I building, modifies the present building approval and the existing building permit will be modified to permit the Phase I construction.

8. The proposed project will devote approximately 153,000 square feet to department store, retail and arts space and additional square footage to general office space.

9. Special exception relief related to the set back of the penthouse approved in BZA Order No. 15233 is no longer required.

10. The subject site is located in the DD/C-4 District and within the area subject to the SHOP District requirements. Section 1703.6 provides that within the SHOP District, a maximum FAR of 10.5 is permitted. The proposed project will contain 11.08 FAR, which is a reduction from the 11.5 FAR approved in the prior order.

11. Pursuant to the Agreement, and as shown on the plans, the applicant will provide as much as 107,000 square feet of space for the department store. The plans that are the subject of this application maintain the space provided for the department store as approved in BZA Order No. 15233.

12. Under the provisions of Section 1703.4(a), bonus FAR is earned at a 3:1 ratio for inclusion of a department store in a building. This bonus is in recognition of the long-standing goal of the District to improve the downtown retail area and to locate another department store in the downtown. The bonus is in further recognition of the substantial costs to the owner of accommodating space for a department store. Department stores demand a large floor area in a prominent location and substantial tenant work. In addition, department stores are only able to lease space at rates well below market levels for other retail and office uses.

13. At a 3:1 ratio, the bonus gross floor area accrued is 321,000 square feet for the department store alone, which exceeds the amount of additional on-site floor area requested. Other potential gross floor area bonuses are subject to the application of Chapter 17 of the Zoning Regulations.

14. As the Board found in Order No. 15233, the size and shape of the lot and the topographical grade change between the E and F Street frontages allows the applicant to increase on-site FAR to 11.08 without any adverse impact on the adjacent properties or the character of the square. Because of the size of the building and the complexities related to designing the department store, the applicant stated that flexibility to increase the FAR by up to one percent is needed. A portion of the bonus FAR generated from the department store and the retail space in accordance with Section 1703.4(a) of the Zoning Regulations may be used on site for an FAR of 11.08, and that the remaining bonus FAR may be used off site consistent with Section 1709 of the Zoning Regulations without further action of this Board.

15. The Zoning Regulations require that entrances to the proposed retail buildings between the main entrance on 12th Street to the corner entrance at the intersection of 12th and F Streets, be separated by not more than 50 feet on average for the linear frontage of the building. The proposed distance between the two entrances is approximately 135 feet.

16. As found in BZA Order No. 15233, the grade changes more than 15 feet from E to F Street along 12th Street. Between the two entrances, the grade changes 7 feet 6 inches. The architect for the applicant testified that the grade change precludes an entrance between the main entrance and the entrance on the corner of 12th and F Streets because such an entrance would require steps in the public space, and would greatly impair the internal floor plan. Therefore, handicapped access would be quite difficult to provide. The grade change along 11th Street is impacted by a similar condition.

17. The SHOP regulations under Section 1703.3 require the applicant to provide at least 1.0 FAR equivalent for certain preferred arts and arts-related uses as set forth in Section 1711. Section 1703.3(d) only applies to certain squares (including Square 321) within the SHOP District known as the Downtown Arts District. As the Board found in Order No. 15233, the practical difficulty is that under the terms of the Development Agreement, the applicant must provide at least 90,001 square feet of space for a department store. The applicant is proposing to provide 107,000 square feet of space for a department store. The SHOP provisions would require an additional 69,832 square feet to be used for arts or arts-related uses such as a gallery, artists' supply store, movie theater or other such use. Therefore, the applicant would be required to provide a minimum of approximately 177,000 square feet of space to below-market-rate uses. The regulations only require a total of 139,664 square feet of retail and arts uses to be provided.

18. The applicant testified and the Development Agreement confirms that the proposed use substantially advances the purposes of the DD District and the SHOP District by the provision of space for a department store. Furthermore, there is no other downtown site which can accommodate a department store, and neighboring properties will benefit from the proposed use which will continue to attract visitors and shoppers to the downtown area.

19. In accordance with the Development Agreement, the applicant has met regularly with representatives of the Office of Planning during the design development stage of the plans. The applicant stated that, at the direction of the Office of Planning, it gave special attention to the design of the retail frontages and overall building design.

20. The project will contain parking for 453 cars located on five below-grade levels, 6 loading berths and 2 service delivery spaces. Access to the parking garage and loading docks will be located mid-block on 11th Street. The applicant's architect testified that the vehicular access is designed to be located away from the major pedestrian thoroughfares on E and F Streets, and away from the main entrance to the building on 12th Street.

21. The Office of Planning (OP), by report dated May 13, 1992, stated that the applicant had met the burden of proof for the variance relief, and recommended approval of the application. OP noted that it and the District government were integral participants in the development process and are in full support of the project. The report stated that the accommodation of space for a department store on the subject site advances the purposes of the DD/SHOP district, and that the variances requested are needed to accommodate the large area that would be needed by a department store and to provide the economic justification for the project.

The OP representative at the hearing requested that the plans received at the hearing be the approved plans and that the approval of the Board be conditioned upon the receipt of the fully executed Amendment to Development Agreement which was yet to be executed by the Executive Secretary to the District.

22. By letter dated May 12, 1992, Advisory Neighborhood Commission (ANC) 2C requested a waiver of the Board's rules to accept the late filing of the ANC's report. By report dated May 12, 1992, ANC 2C supported the project and noted that it had previously supported BZA Application No. 15233 by report dated January 5, 1990. The ANC concluded that the present application to add Lot 23 is a modification to the previously approved project. It further concluded that the plans for the department store have not changed through the modification.

23. There was no opposition to the application.

FINDINGS OF FACT:

1. The subject site provides potentially the last feasible opportunity for the District to add an additional department store to the downtown retail area since there is no other downtown property in size and location that can accommodate such an important use.

2. The instant application is in the nature of a modification to the Board's approval of BZA Application No. 15233 to permit the addition of Lot 23 to the subject site. The building at the conclusion of Phase II will function as a single unified building. The Board finds that commencement of construction of Phase I of the building constitutes proceeding with the entire project for zoning purposes.

3. It is appropriate to allow flexibility to increase the FAR by up to one percent.

4. The size and shape of the lot and the topographical grade changes between the E and F Streets frontages allows an increase in the on-site FAR to 11.08 without any adverse impact on the adjacent properties or the character of the square.

5. A portion of the bonus FAR generated from the department store and the retail space in accordance with Section 1703.4(a) of the Zoning Regulations may be used on-site for an FAR of 11.08, and that the remaining bonus FAR may be used off site consistent with Section 1709 of the Zoning Regulations without further action of the Board.

6. The Board renews its previous finding that meeting the arts space requirement would make the department store and the overall project infeasible on both a functional and economic basis.

7. The proposed development will substantially advance the stated purpose of the SHOP District.

8. The proposed development will not adversely affect neighboring property, which to the south of the subject site includes property zoned C-5 (Permitting a height of 160 feet), and will not be detrimental to the health, safety, convenience or general welfare of persons living, working or visiting in the area.

9. The development, in providing space for an additional department store in the retail core, satisfies one of the important goals of the city as stated in the DD regulations related to the SHOP District and the Comprehensive Plan, and that this alternative public benefit is of greater value to the public in achieving those purposes than following the strict requirements of DD/SHOP. The variances requested are needed to accommodate the large area required for a department store, to address the topographical conditions of the site and its unique planning history, and to provide the economic justification for the project. The Board finds that there are exceptional circumstances affecting the property making compliance with DD/SHOP difficult and impractical, and that the alternative public benefits are of comparable value to the public in achieving the purpose of DD/SHOP and the Comprehensive Plan.

10. The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located.

11. Vehicular access and egress are located so as to minimize pedestrian conflict, to function efficiently and to create no dangerous or otherwise objectionable traffic conditions.

12. Advisory Neighborhood Commission 2C filed a written report in support of the application.

13. The Office of Planning report is appropriate, including the recommendation that the plans filed at the hearing be the approved plans and that the fully executed amendment to the development agreement be received into the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking area variances from the floor area ratio requirements, from the requirement that not less than 50 percent of the surface area of

the street wall at the ground floor of each building be devoted to display windows and to entrances to commercial uses and from the requirement that 50 percent of the required floor area that must be retail be devoted to arts uses and arts-related uses, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique exceptional condition of the property.

The Board concludes that the application meets the standards for granting the requested variances. The subject site is unique and affected by several exceptional situations or conditions. The practical difficulty for the FAR variance is based on the size of the site, and the topographical change in grade from one end of the site to the other. The grade change between E and F Streets allows an 11.08 FAR to be absorbed in the building without exceeding the height limit. In addition, the FAR variance is necessary in order for the applicant to be able to reasonably use transferable development rights (TDRs) on-site generated by the department store space. The site is unique in that it is the only available square within the SHOP District where a new department store may be physically located. Further, due to the size of the building and the complexities inherent in designing the department store, flexibility to increase the FAR by up to one percent is appropriate.

The change in grade and the location of the department store space also affects the ability of the site to provide entrances to the building separated by not more than 50 feet on average for the 12th Street linear frontage of the building, between the main entrance and the entrance at the intersection of 12th and F Streets. The 135-foot distance between the main entrance on 12th Street and the corner entrance at 12th and F Streets provides display windows consistent with the requirements of the Zoning Regulations.

The grade change between the two entrances would require either steps in the public space or a graduated internal floor plan in order to provide the required entrances. Handicapped access would be exceedingly difficult to provide and would create inefficient space. With respect to preferred arts and arts-related uses, the applicant cannot practically provide the department store, as well as retail space and other space to be used for arts or arts-related uses.

The Board further concludes that the portion of the bonus FAR not used on the site may be transferred off-site consistent with Section 1709 of the Zoning Regulations by right, and without further action by this Board.

In proceeding with site development, the Board concludes that this order vests for zoning purposes both phases of applicant's project upon the commencement of construction of the first phase and that this application is in the nature of a modification to add Lot 23 to the subject site for which the existing building permit will be modified. Furthermore, the applicant may proceed with subdivision into a single record lot at this time with the Phase II building to become a single building with the Phase I structure at a future date.

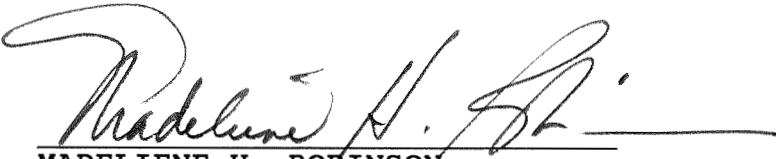
The Board further concludes that the application can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Construction on the site shall be in accordance with the plans in the record marked as Exhibit No. 29 of the record.
2. The First Amendment to Development Agreement, dated May 20, 1992, previously executed by the Deputy Mayor for Economic Development and the applicant shall be fully executed by the Secretary, District of Columbia or other authorized representative of the District of Columbia and a copy of the fully executed Amendment shall be filed in the records of the Board in this application.

VOTE: 3-0 (Paula L. Jewell, John G. Parsons and Angel F. Clarens to approve; Sheri M. Pruitt and Carrie L. Thornhill not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

AUG 6 1992

BZA APPLICATION NO. 15690
PAGE NO. 9

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15690Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT




BZA APPLICATION NO. 15690

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 6 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. ROBINSON
Acting Director

DATE: AUG 6 1992

15690Att/bhs